

**NATIONAL CERTIFICATION BOARD FOR THERAPEUTIC MASSAGE & BODYWORK**

**RULES AND PROCEDURES REGARDING  
ETHICAL AND PROFESSIONAL DISCIPLINE COMPLAINTS**

As of: August 13, 2009

**TABLE OF CONTENTS**

I. Definitions .....	1
II. Purposes, Authority, and Structure of the Ethics and Standards Committee .....	2
2.1 Purposes	
2.2 Authority	
2.3 Structure	
III. Submission and Receipt of Complaints .....	4
3.1 Parties That May Submit Complaints	
3.2. Contents of a Complaint	
3.3 Initial Evaluation of a Complaint	
IV. Investigative Procedure .....	6
4.1 Informing Complainant and Certificant of Investigation	
4.2 Referral to Investigative Team and Assignment of Investigative Team	
4.3 Certificant’s or Applicant’s Response to Complaint	
4.4 Investigation by Investigative Team	
4.5 Interview of the Certificant or Applicant	
4.6 Report to Committee	
V. Disposition of Complaint .....	8
5.1 Committee Action Regarding Certificants and Applicants	
5.2 Committee Actions Regarding Approved Providers	
5.3 Notice of Action	
5.4 Request for Appeal	
5.5 Waiver by Failure to Request an Appeal	
VI. Appeal Procedure.....	10
6.1 Requirements of an Appeal Request	
6.2 Granting of an Appeal Request	
6.3 Board Panel	
6.4 Board Panel Meeting	
6.5 Attendance	
6.6 Background Information	
6.7 Consideration of New or Additional Matters	
6.8 Burden of Proof	
6.9 Board Panel’s Deliberations	
6.10 Board Panel’s Decision	
VII. Notification of Final Action .....	12
7.1 Notification to Complainant	
7.2 Publication of Sanctions Against Certificants	
7.3 Publication of Sanctions Against Approved Providers	
7.5 Inclusion in NCBTMB’s Database	
VIII. Other Actions .....	13
8.1 Felony Conviction or Guilty Plea While an Applicant or Certificant	
8.2 Conviction of Crimes Involving Sexual Misconduct While an Applicant or Certificant	
8.3 Loss of State Licensure, Certification, or Registration due to Revocation, Suspension, or	

Voluntary Relinquishment While Under Investigation	
8.4 Other Revocation of State Licensure, Certification, or Registration or Association Membership and Malpractice	
IX. Reapplication after Revocation or Denial.....	15
9.1 Eligibility to Reapply for a Certificant or Applicant	
9.2 Eligibility to Reapply for an Approved Provider	
9.3 Processing of Reapplications	
X. Information and Processing.....	16
10.1 Confidentiality	
10.2 Recordkeeping	
10.3 Time Periods for Processing	
XI. Amendments .....	17
11.1 By the Committee	
11.2 By the Board	
11.3 Amended Rules	

**NATIONAL CERTIFICATION BOARD  
FOR THERAPEUTIC MASSAGE & BODYWORK**

**RULES AND PROCEDURES REGARDING  
ETHICAL AND PROFESSIONAL DISCIPLINE COMPLAINTS**

**I. Definitions.**

- 1.1 Appeal Request.** A written request to appeal the Committee's decision by a Certificant, Applicant or Approved Provider in accordance with Articles V and VI of these Rules and Procedures.
- 1.2 Applicant.** The term Applicant shall mean an individual who has a complete, active application to become certified on file with NCBTMB but has not yet become a Certificant.
- 1.3 Approved Provider.** The term Approved Provider shall mean an individual or entity approved by NCBTMB to provide continuing education.
- 1.4 Board.** The term Board shall mean the Board of Directors of NCBTMB.
- 1.5 Board Liaison.** The term Board Liaison shall refer to the Chair of the Board and/or his or her designee in his or her role as a member of the Committee pursuant to Section 2.3(A).
- 1.6 Certificant.** The term Certificant shall mean an individual certified by NCBTMB.
- 1.7 Chief Executive Officer.** The term Chief Executive Officer shall mean the Chief Executive Officer of NCBTMB.
- 1.8 Code.** The term Code shall mean the NCBTMB Code of Ethics.
- 1.9 Committee.** The term Committee shall mean the Ethics and Standards Committee of NCBTMB, which is a peer review committee.
- 1.10 Complainant.** The term Complainant shall mean an individual, group of individuals, or an organization, including NCBTMB, that files a complaint with NCBTMB against a Certificant, Applicant, or Approved Provider in accordance with Section 3.2.
- 1.11 Complaint.** The term Complaint shall mean a complaint filed against a Certificant, Applicant or Approved Provider in accordance with Section 3.2.
- 1.12 Director – Ethics & Discipline.** The term Director – Ethics & Discipline shall mean the NCBTMB senior staff employee with that or a similar title responsible for managing and coordinating the NCBTMB ethics and discipline complaint and review process. If the Director – Ethics & Discipline is unavailable, the NCBTMB Chief Executive Officer may designate an NCBTMB staff employee to act as the Director – Ethics & Discipline for the purposes set forth in these Rules and Procedures.
- 1.13 Investigative Team.** The term Investigative Team shall refer to a group of two (2) or three (3) Committee members designated to investigate a Complaint in accordance with Section 4.2(B).

- 1.14 NCBTMB.** The term NCBTMB shall mean the National Certification Board for Therapeutic Massage & Bodywork.
- 1.15 Rules and Procedures.** The term Rules and Procedures shall refer to these Rules and Procedures Regarding Ethical and Professional Discipline Complaints.
- 1.16 Standards.** The term Standards shall mean the NCBTMB Standards of Practice.
- 1.17 Unethical Conduct.** Conduct that violates the Code and/or the Standards.

## **II. Purposes, Authority, and Structure of the Ethics and Standards Committee.**

### **2.1 Purposes.** The purposes of the Committee are:

- A. To enforce NCBTMB's Code, Standards, and these Rules and Procedures.
- B. To serve as a means for evaluating ethical questions about Applicants and Certificants on a peer review basis.
- C. To assist in protecting the public against Unethical Conduct by Certificants and Applicants.
- D. To assist in protecting the public against Unethical Conduct in the delivery of massage education by Approved Providers.
- E. To investigate legitimate Complaints as determined by the Committee.
- F. To determine violations of the Code and Standards by Certificants, Applicants or Approved Providers based on the results of its investigations.

### **2.2 Authority.** The authority of the Committee is to:

- A. Receive, review, evaluate, investigate and respond to legitimate Complaints against Certificants and Applicants.
- B. Receive, review, evaluate investigate and respond to legitimate Complaints regarding the delivery of massage education by Approved Providers.
- C. Review these Rules and Procedures, Standards, and Code and to recommend changes to the Board for the Board's consideration.
- D. Conduct all Committee affairs in a manner and atmosphere free of discrimination based on race, color, gender, age, sexual orientation, ethnicity, national origin, religion, disability, and marital status, as defined and prohibited by applicable law.
- E. Conduct an annual training session regarding the Committee's responsibilities under these Rules and Procedures.
- F. Perform other tasks commensurate with the Committee's purposes as requested by the Board.

### **2.3 Structure.**

- A. *Composition.* The Committee shall consist of at least three (3) voting members, which shall include Certificants in good standing and at least one (1) public member. Members should, as feasible, reflect the geography, gender, and qualities of the therapeutic massage and bodywork profession. The Chair of the Board, as Board Liaison, and/or his or her designee, shall serve as an ex-officio, non-voting member of the Committee.

- B. *Qualifications.* Committee members who are Certificants must possess thorough knowledge and understanding of the protocol of massage therapy and bodywork. Committee members who are Certificants shall have a minimum of five (5) years of experience in the profession. Committee members who are Certificants shall have adequate experience with professional standards. Public member(s) of the Committee may have some experience in the field of massage therapy and/or bodywork and shall have adequate experience with professional standards.
- C. *Selection.* The Chair of the Board shall appoint the Chair of the Committee. The Chair of the Committee shall interview, evaluate and select the members of the Committee.
- D. *Meetings.* The Committee shall meet at reasonable intervals, as needed, to carry out its responsibilities as set forth in these Rules and Procedures, but in any event not fewer than four (4) times each year, with one of those meetings consisting of an in person training session. With the exception of the training session, all meetings may be conducted by telephone or other type of communication allowing all Committee members to be heard and participate. Minutes shall be kept for each meeting as a record of the Committee's activities. Committee members must be given adequate advance notice of any Committee meeting, except that such notice may be waived by attendance at the meeting. The presence of a majority of the voting membership of the Committee shall constitute a quorum for meetings of the Committee. Committee decisions shall be made by a majority vote of a quorum present at a meeting.

### **III. Submission and Receipt of Complaints**

**3.1 Parties That May Submit Complaints.** A Complaint against a Certificant, Applicant or Approved Provider may be submitted to the Committee by:

- A. any party claiming to have been harmed by the Unethical Conduct of a Certificant or Applicant;
- B. any party claiming to have been harmed by the Unethical Conduct during the delivery of massage education by an Approved Provider;
- C. a Certificant, Applicant or Approved Provider self reporting Unethical Conduct;
- D. any Certificant, Applicant or Approved Provider who, in good faith, believes that another Certificant, Applicant or Approved Provider engaged in unprofessional conduct in violation of the Code and/or Standards;
- E. any national, regional, state, or local professional association of massage therapists and bodyworkers of which the Certificant, Applicant or Approved Provider is a member;
- F. any licensing or certifying authority; or
- G. the Committee.

The Committee may not act solely on the basis of an anonymous Complaint or a Complaint by a Complainant who does not want his or her name to be disclosed to the Certificant, Applicant or Approved Provider who is the subject of the Complaint.

**3.2. Contents of a Complaint.** All legitimate Complaints must include the following information:

- A. the name, address, and telephone number of the Certificant, Applicant or Approved Provider;
- B. the name, address, and telephone number of the Complainant;
- C. a detailed description of the facts supporting the Complaint;
- D. a description of any steps that have been taken to address the situation explained in the Complaint, and the results thereof;
- E. the specific sections of the Code and/or Standards alleged to have been violated and an explanation as to how the sections were violated;
- F. the Complainant's approval for the Committee to disclose all information to the Certificant, Applicant, the Approved Provider, the Committee, NCBTMB staff, legal counsel, and experts involved in handling the Complaint; and
- G. the Complainant's signature.

Copies of these Rules and Procedures, the Code, and the Standards may be provided to the Complainant to assist the Complainant in drafting a Complaint and with complying with these Rules and Procedures.

**3.3 Initial Evaluation of a Complaint.** Within forty-five (45) days of receiving a legitimate Complaint in compliance with Section 3.2, the Committee shall evaluate the Complaint and determine whether the allegations in the Complaint, if true, would constitute Unethical Conduct. If the Committee determines that the allegations, if true, would constitute Unethical Conduct, the Complaint shall be investigated in accordance with Article IV. If the Committee determines that the allegations, if true, would not constitute Unethical Conduct, the Chief Executive Officer shall inform the Complainant of the Committee's determination within thirty (30) days of such determination. No Committee member shall consider, evaluate or help determine the validity or disposition of a Complaint if such Committee member sufficiently knows any material party to the Complaint, is in direct competition with the Complainant, Certificant, or Approved Provider, or otherwise should be recused due to an existing or potential conflict of interest.

#### IV. Investigative Procedure.

**4.1 Informing Complainant and Certificant of Investigation.** The Chief Executive Officer must inform the Complainant and Certificant, Applicant or Approved Provider of the Committee's decision that the Complaint warrants investigation within fifteen (15) days of such determination. The correspondence to the Complainant shall include copies of these Rules and Procedures, the Code, and the Standards, if not already provided. The correspondence to the Certificant, Applicant or Approved Provider must include:

- A. a copy of the Complaint;
- B. copies of these Rules and Procedures, the Code, and the Standards;
- C. a request that the Certificant, Applicant or Approved Provider respond in writing as required by Section 4.3, and the consequences of failing to respond, as set forth in Section 4.3; and
- D. information about the Certificant's, Applicant's or Approved Provider's right to an interview with the Investigative Team assigned to investigate the Complaint.

#### **4.2 Assignment to Investigative Team**

- A. *Referral.* In the event that the Committee determines that a Complaint warrants investigation, such Complaint shall be investigated by an Investigative Team. At the time that the Committee receives the Complaint, the Committee Chair shall assign an Investigative Team to investigate the Complaint. The Committee will indicate key questions and issues that it identified in its review of the Complaint to the Investigative Team though the Investigative Team shall not be required to limit its investigation solely to these questions and issues.
- B. *Conflict of Interest.* No Investigative Team member shall consider, evaluate or help determine the disposition of a Complaint if such Investigative Team member sufficiently knows any material party to the Complaint, is in direct competition with the Complainant, Certificant, Applicant, Approved Provider, or otherwise should be recused due to an existing or potential conflict of interest.

**4.3 Certificant's, Applicant's or Approved Provider's Response to Complaint.** The Certificant, Applicant or Approved Provider must respond, in writing, to the allegations contained in the Complaint within thirty (30) days of receiving the Complaint. The response shall include a detailed description of the facts surrounding the allegations contained in the Complaint and the situation giving rise to the Complaint. Failure to respond to the Complaint shall not constitute a waiver of the Certificant's, Applicant's or Approved Provider's right to appeal any sanction imposed by the Committee in response to the Complaint. Failure to respond may be considered as a factor by the Committee when considering the merits of the Complaint. Moreover, the Certificant's, Applicant's, or Approved Provider's failure to respond shall not prevent the Investigative Team from completing its investigation or prevent the Committee from taking action based on the information available.

**4.4 Investigation by Investigative Team.** The Investigative Team shall conduct an investigation of the allegations contained in the Complaint using reasonable methods, including without limitation telephone interviews and/or written requests for information or documentation. The Investigative Team may consult with any individuals who may have information regarding the allegations contained in the

Complaint. With the consent of the Committee Chair, the Investigative Team may consult with experts, as necessary. Such experts shall be bound by the confidentiality obligations in Section 10.1.

**4.5 Interview with the Certificant, Applicant or Approved Provider.** Upon the request of the Investigative Team, the Certificant, Applicant or Approved Provider shall participate in a telephone interview with the Investigative Team prior to the Investigative Team submitting the report to the Committee as described in Section 4.6 below. During the interview, the Certificant, Applicant or Approved Provider will be informed of the general nature of the evidence supporting the Complaint and shall be invited to discuss, explain, or refute the Complaint. The interview shall be informal in nature, and none of the procedural rules for appeals contained in these Rules and Procedures shall apply. Failure by a Certificant, Applicant or Approved Provider to participate in an interview with the Investigative Team shall not constitute waiver of any right to appeal under these Rules and Procedures. The Certificant's failure to participate in the interview may be considered as a factor by the Investigative Team. A summary of the interview will be made by the Investigative Team and shall be included with the Investigative Team's report to the Committee. The Certificant's, Applicant's or Approved Provider's failure to participate in a telephone interview shall not prevent the Investigative Team from submitting its report to the Committee or prevent the Committee from taking action based on the information available.

**4.6 Report to Committee.** Within thirty (30) days of the Investigative Team's completion of its investigation, the Investigative Team shall submit a written report of the investigation to the Committee. The report must include a description of the facts of the situation that gave rise to the Complaint, a description of the Unethical Conduct, if any, and the Code sections and/or Standards violated, if any. The Investigative Team may conclude that the Complaint has no basis in fact, is insufficient to substantiate a finding that the Code and/or Standards were violated, or is likely to be corrected without Committee action, and in such situations, it may recommend to the Committee that the case be closed without further action.

**V. Disposition of Complaint.**

**5.1 Committee Actions Regarding Certificants and Applicants.** Upon receipt of the Investigative Team's report, the Committee shall review the report and take one (1) or more of the following actions, as appropriate:

- A. no action;
- B. issuance of a written warning;
- C. issuance of a letter of reprimand;
- D. imposition of terms of probation, which may include a requirement for the Certificant to take appropriate continuing education course(s);
- E. suspension of a Certificant's certification for defined period of time;
- F. permanent or non-permanent revocation of a Certificant's certification;
- G. denial of an Applicant's application;
- H. such other action as it deems appropriate.

**5.2 Committee Actions Regarding Approved Providers.** Upon receipt of the Investigative Team's report, the Committee shall review the report and take one (1) or more of the following actions, as appropriate:

- A. no action;
- B. issuance of a written warning;
- C. issuance of a letter of reprimand;
- D. imposition of terms of probation, which may include a requirement for the Approved Provider to take appropriate continuing education course(s);
- E. suspension of an Approved Provider's status for defined period of time;
- F. permanent or non-permanent revocation of an Approved Provider's status;
- G. such other action as it deems appropriate.

**5.3 Notice of Action.** The Chief Executive Officer shall provide written notice to the Certificant, Applicant or Approved Provider within fifteen (15) days of the Committee's action under Sections 5.1 and Section 5.2. The notice shall include a brief description of the reasons for the action, the Unethical Conduct, the Code section and/or Standard violated, and information about the process for appealing the Committee's action.

- 5.4 Request for Appeal.** A Certificant, Applicant and Approved Provider shall have thirty (30) days following receipt of a notice pursuant to Section 5.3 to file a written Appeal Request. The Appeal Request shall be sent to the Chief Executive Officer by certified mail, overnight express mail, or such other delivery method containing written verification of its delivery. By requesting an appeal, the Certificant, Applicant or Approved Provider agrees to be bound by the provisions of these Rules and Procedures in all matters relating thereto. The Chief Executive Officer shall notify the Chair of the Committee, the Chair of the Board and Director – Ethics & Discipline about the Appeal Request.
- 5.5 Waiver by Failure to Request an Appeal.** Absent extraordinary circumstances, in the event that a Certificant, Applicant or Approved Provider fails to properly submit the Appeal Request within the time and manner specified in Section 5.4, the Certificant, Applicant or Approved Provider shall be deemed to have waived the right to such appeal. The Committee’s action shall thereupon be final.

## VI. Appeal Procedure.

- 6.1 Requirements of an Appeal Request.** The Certificant, Applicant or Approved Provider must demonstrate in his or her written Appeal Request that, from a preponderance of the evidence: (1) the violations found by the Committee lack a factual basis, or (2) the resulting sanction, the basis of the Committee's decision or the conclusion drawn therefrom are arbitrary, unreasonable, or capricious. The Appeal Request must include all evidence that is to be considered by the Board Panel. All such evidence must be new and different than the evidence considered by the Committee and must set forth adequate reasons why such evidence was not provided to the Committee. If the Certificant's, Applicant's or Approved Provider's Appeal Request does not adequately address one or both of these requirements, the Appeal Request will be denied and the Committee's decision will be final.
- 6.2 Granting of an Appeal Request.** All Appeal Requests must be delivered to the Chief Executive Officer within thirty (30) days following receipt of a notice pursuant to Sections 5.3 and 5.4. The Chief Executive Officer promptly shall deliver the Appeal Request to the Director – Ethics & Discipline for consideration. Within fifteen (15) days from the Chief Executive Officer's receipt of the Appeal Request, and after consultation with NCBTMB's legal counsel, the Director – Ethics & Discipline shall determine if the Appeal Request is likely to meet the requirements set forth in Section 6.1 and, within five (5) days from such determination, the Director – Ethics & Discipline shall notify: (i) the party filing the Appeal Request; (ii) the Chief Executive Officer; and (iii) the Chair of the Board. If the Director – Ethics & Discipline determines that the Appeal Request is likely to meet the requirements of Section 6.1, the Board Panel shall review the Appeal Request.
- 6.3 Board Panel.**
- A. *Appointment.* The Appeal Request shall be considered by a Board Panel appointed by the Chair of the Board and composed of three (3) Board members, at least two (2) of which shall be Certificants. One (1) of the appointees to the Board Panel shall be designated as the Chair.
- B. *Restrictions.* No member of the Board of Directors who filed the Complaint or served on the Committee or Investigative Team while the Complaint was active shall serve as a member of the Board Panel. Board Panel members shall not be in direct economic competition with the Certificant, Applicant or Approved Provider requesting the appeal. No Board Panel member shall consider, evaluate or help determine the disposition of an appeal if such Board Panel member sufficiently knows any material party to the Complaint, is in direct competition with the Complainant, Certificant, Approved Provider, or otherwise should be recused due to an existing or potential conflict of interest.
- 6.4 Board Panel Meeting.** The Board Panel shall consider all Appeal Requests approved by the Director – Ethics & Discipline in accordance with Section 6.2. The Board Panel shall consider such approved Appeal Requests at its next regularly scheduled Board of Directors meeting, provided that such Appeal Request was received and approved by the Director – Ethics & Discipline at least fifteen (15) business days prior to the date of the next Board meeting.
- 6.5 Attendance.** The Board Panel's consideration of the Appeal Request shall be closed to the Certificant, Applicant or Approved Provider as well as to all third parties, except for witnesses and experts approved by the Board Panel, NCBTMB staff, the Committee Chair, and legal counsel. The Board Panel, in its sole

discretion, may allow the Certificant, Applicant or Approved Provider to attend in-person on a case-by-case basis.

- 6.6 Background Information.** The Chair of the Committee or his or her designee shall provide the members of the Board Panel with all relevant information and materials collected during the Investigative Team's investigation and the Committee's consideration. Such information shall include the Investigative Team's report, a record of the Committee's final decision and sanction, correspondence, and any other relevant documents. This background information should be provided at least ten (10) days in advance of the appeal.
- 6.7 Consideration of New or Additional Matters.** New or additional matters not presented to the Committee or Investigative Team during its review and not otherwise reflected in the record shall be used only in compliance with Section 6.1 above. The Board Panel, in its sole discretion, shall determine whether it is appropriate to consider such additional matters or evidence.
- 6.8 Burden of Proof.** The Board Panel shall reverse or modify the Committee's recommended sanction only in the event that the written Appeal Request shows, by clear and convincing evidence, that the grounds for the Committee's sanction lack a factual basis or that such bases or the conclusion drawn therefrom are arbitrary, unreasonable, or capricious.
- 6.9 Board Panel's Deliberations.** After reviewing the Appeal Request, the Board Panel shall conduct its deliberations. Upon the conclusion of those deliberations, the appellate review shall be declared finally adjourned.
- 6.10 Board Panel's Decision.** Within fifteen (15) days of the date of the consideration of the Appeal Request, the Board Panel shall notify the Chief Executive Officer, in writing, of its decision and action. The Board Panel's decision is final and cannot be appealed. The Chief Executive Officer shall provide copies of the Board Panel's written report to the Certificant, Applicant or Approved Provider, the Chair of the Board, and the Chair of the Committee. Upon request of the Chair of the Committee, the Chair of the Board Panel shall advise the Chair of the Committee, who shall likewise advise the Committee, about the reasons for any variation between the Board Panel's decision and the Committee's decision.

**VII. Notification of Final Action.**

- 7.1 Notification to Complainant.** If the Certificant, Applicant or Approved Provider does not file an Appeal Request, the Chief Executive Officer shall inform the Complainant in writing of the Committee's action within fifteen (15) days of the expiration of the time period within which the Certificant, Applicant or Approved Provider was required to file the Appeal Request. If the Certificant, Applicant, or Approved Provider requests an appeal, the Chief Executive Officer shall inform the Complainant of the Board Panel's decision within fifteen (15) days of receipt of the Board Panel's written report of its decision.
- 7.2 Publication of Sanctions Against Certificants.** The following sanctions against a Certificant shall be published: issuance of a letter of reprimand, imposition of terms of probation, suspension of a Certificant's certification, and revocation of a Certificant's certification. The Certificant's name, city, state of record and the Certificant's certification number, the numerical references to the Code sections and/or the Standards violated, and the sanction(s) imposed shall be published in NCBTMB's newsletter and on NCBTMB's website. This information also may be disclosed to interested private, public, governmental, quasi-governmental, and regulatory bodies, and third party payors, at the discretion of NCBTMB.
- 7.3 Publication of Sanctions Against Approved Providers.** The following sanctions against an Approved Provider shall be published: issuance of a letter of reprimand, imposition of terms of probation, suspension of an Approved Provider's status, and revocation of a Approved Provider's status. The Approved Provider's name, city, and state, the numerical references to the Code sections and/or the Standards violated, and the sanction imposed shall be published in NCBTMB's newsletter and on NCBTMB's website. This information also may be disclosed to interested private, public, governmental, quasi-governmental, and regulatory bodies, and third party payors, at the discretion of NCBTMB.
- 7.4 Inclusion in NCBTMB's Database.** All final actions taken against Certificants, Applicants and Approved Providers pursuant to these Rules and Procedures shall be noted in NCBTMB's internal database of information.

## VIII. Other Actions.

**8.1 Felony Conviction or Guilty Plea While an Applicant or Certificant.** If the Committee finds that a Certificant or Applicant has been convicted of, or has plead guilty or nolo contendere to, a felony while an Applicant or Certificant, the Committee shall review the relevant court records and may revoke the Certificant's certification or deny the Applicant's application without further proceedings, except that the Certificant shall have the right to appeal the Committee's decision in accordance with Articles V and VI. The Certificant or Applicant may reapply for certification in accordance with Article IX.

**8.2 Conviction of Crimes Involving Sexual Misconduct While an Applicant or Certificant.** If the Committee finds that a Certificant or Applicant has been convicted of, or has plead guilty or nolo contendere to, a crime involving sexual misconduct while a Certificant or Applicant, the Committee may review the relevant court records and shall revoke the Certificant's certification or deny the Applicant's application without further proceedings, except that the Certificant shall have the right to appeal the Committee's decision in accordance with Articles V and VI. The Certificant or Applicant may reapply for certification in accordance with Article IX.

**8.3 Loss of State Licensure, Certification or Registration due to Revocation, Suspension, or Voluntary Relinquishment While Under Investigation.**

A. *Covered Actions.* If the Committee finds the following:

- i. a Certificant's or Applicant's state license, certificate, or registration to practice massage therapy and/or bodywork has been revoked or suspended, after final adjudication, on the basis of unprofessional conduct, as defined in Section 8.3(B); or
- ii. a Certificant or Applicant has voluntarily relinquished or surrendered his/her state license, certificate, or registration while under investigation for alleged unprofessional conduct, as defined in Section 8.3(B);

the Committee shall review the relevant court records and may revoke the Certificant's certification or deny the Applicant's application without further proceedings, except that the Certificant shall have the right to appeal the Committee's decision in accordance with Articles V and VI. The Certificant or Applicant may reapply for certification in accordance with Article IX.

B. *Unprofessional Conduct.* Notwithstanding state law definitions of the term "unprofessional conduct," for purposes of Sections 8.3 and 8.4, the term "unprofessional conduct" means and includes, but is not limited to, engaging in and/or offering to engage in sexual activity with a client; engaging in conduct that could result in harm or injury to the public; engaging in gross negligence or malpractice in the practice of therapeutic massage and bodywork; using drugs or alcohol to an extent that results in the inability to practice therapeutic massage and bodywork with reasonable judgment, skill, and safety; practicing beyond the individual's scope of practice as a practitioner of therapeutic massage and bodywork; fraudulently or deceptively obtaining, attempting to obtain, or using a license, certificate, or registration to practice therapeutic massage and bodywork; using fraud or deceit in communications with the public or with health care professionals; charging grossly unreasonable or fraudulent fees for services performed or not performed; failing to cooperate with a lawful investigation conducted by a federal, state, local or other regulatory entity; failing to cooperate with a lawful investigation conducted by NCBTMB,

and acting in a way that is inconsistent with generally accepted professional standards in the practice of massage therapy and bodywork.

**8.4 Other Revocation of State Licensure, Certification, or Registration or Association Membership and Malpractice.** If the Committee finds the following:

- A. a Certificant's or Applicant's state licensure, certification, or registration to practice massage therapy and/or bodywork has been revoked or suspended for reasons other than unprofessional conduct as defined in Section 8.3(B) above or a Certificant or Applicant has been placed on probation, reprimanded, or otherwise subjected to disciplinary action for any reason;
- B. a Certificant or Applicant has been expelled or suspended from a national, regional, state, or local professional massage therapists' and bodyworkers' association; or
- C. a Certificant or Applicant has been found, in a civil action, to have engaged in malpractice in the practice of therapeutic massage and bodywork,

the Committee may draft a Complaint against the Certificant or Applicant in accordance with Article III.

**IX. Reapplication after Revocation or Denial.**

- 9.1 Eligibility to Reapply for a Certificant or Applicant.** An Applicant whose application has been denied or a Certificant whose certification has been revoked shall not be eligible to reapply for NCBTMB certification until such time as determined by the Committee, in its sole discretion. The Committee shall determine, in its sole discretion, whether to approve or deny an Applicant's or a Certificant's reapplication for certification with NCBTMB. A Certificant whose certification has been permanently revoked shall not be eligible to reapply for NCBTMB certification.
- 9.2 Eligibility to Reapply for an Approved Provider.** An Approved Provider whose status has been revoked by the Committee pursuant to Section 2.2 (B) shall not be eligible to reapply to become an Approved Provider until such time as determined by the Committee, in its sole discretion. The Committee shall determine, in conjunction with the Continuing Education Panel, whether to approve or deny an Approved Provider's reapplication. An Approved Provider whose status has been permanently revoked shall not be eligible to reapply for NCBTMB certification.
- 9.3 Processing of Reapplications.** Any reapplication under this Article IX shall be processed as an initial application. The applicant shall submit such additional information requested by the Committee.

**X. Information and Processing.**

- 10.1 Confidentiality.** All information disclosed to the Committee and Board Panel during the processes contained in these Rules and Procedures shall be maintained as confidential. Notwithstanding the above, NCBTMB may disclose such information when compelled by law. In addition, all information that is submitted to NCBTMB, including photographs, may be provided to law enforcement agencies and state, county, and/or local governmental agencies upon their request and at NCBTMB's discretion. NCBTMB may also disclose such information to parties essential to the processes contained in these Rules and Procedures, including NCBTMB staff, legal counsel, and experts. Experts must agree in writing to maintain all such information as confidential. If allegations in a Complaint involve an Approved Provider but do not involve violations relating to the delivery of massage education, the Committee shall disclose such information to NCBTMB's Continuing Education Panel for review and possible action.
- 10.2 Recordkeeping.** Once a case is closed, the Committee shall work with NCBTMB staff to ensure that the confidentiality of the record is maintained. Committee members and Board members, in accordance with NCBTMB's document destruction policy, shall shred or return to NCBTMB for destruction all information received and notes generated during the course of the procedures contained in these Rules and Procedures. Upon the shredding of all information received and generated during the course of the procedures contained in these Rules and Procedures, Committee members and Board Panel members shall notify NCBTMB in writing about such shredding within ten (10) days from the date they are notified of the closing of the case. At the conclusion of a case, all members of the Committee and the Board Panel shall use reasonable and commercially accepted means to permanently delete and remove all information that is in electronic format and that is under their control, and shall verify with NCBTMB staff that such efforts have been undertaken.
- 10.3 Time Periods for Processing.** Certificants, Applicants, and Complainants acknowledge that, while good faith efforts will be made to consider Complaints, appeals, and requests for review of applications in a reasonably timely manner and within the time periods specified in these Rules and Procedures, the specified time periods requiring Committee action shall not be deemed to create any rights on the part of Certificants, Applicants, or Complainants to have information processed within those periods. Failure of any body or individual to comply with the time periods shall in no event prevent continuation or conclusion of a proceeding.

**XI. Amendments.**

- 11.1 By the Committee.** The Committee may propose written amendments to the Rules and Procedures in writing to the Board at any time, provided that such amendments have been approved by a majority of Committee members. Such amendments shall become effective only upon approval by the Board.
- 11.2 By the Board.** The Board may amend the Rules and Procedures at any time it deems such amendment necessary to promote NCBTMB's best interests. Such amendments shall become effective only upon approval by the Board.

**Revised: February xx, 2010**

Copyright @2010 NCBTMB